

1
2
3
4
5
6
7
8
9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

11 SKY MILLER,

12 Plaintiff,

13 v.

14 RON VAN BOENING et al.,

15 Defendants.
16

CASE NO. C10-5712RBL/JRC

ORDER

17 This 42 U.S.C. §1983 civil rights matter has been referred to the undersigned Magistrate
18 Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and(B) and Local Magistrate Judge Rules MJR 1,
19 MJR 3, and MJR 4. Two motions filed by plaintiff and one motion filed by defendants are
20 before the court. These motions need to be addressed before the court will consider the pending
21 motion for summary judgment and cross motion for summary judgment.
22

23 The motions are: 1) plaintiff's motion to allow supplemental evidence (ECF No. 36); 2)
24 plaintiff's motion asking for an order to force defendants' counsel to meet and confer regarding
25 outstanding discovery (ECF No. 38); and 3) defendants' motion within the cross motion for
26 summary judgment asking the court to stay discovery pending a ruling on dispositive motions
(ECF No. 27). Plaintiff's motions are GRANTED. Defendants' motion is DENIED.

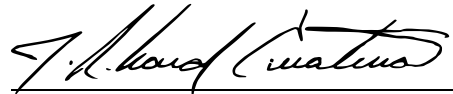
1 Plaintiff has provided a series of letters and responses showing an improper discovery
2 pattern. When asked to meet and confer, defendants' counsel has stated, among other things,
3 that responses are not yet due, deferred a meeting by asking for additional information, and
4 refused to answer discover requests claiming they were not in proper form (ECF No. 38,
5 Exhibits, letters dated March 29, 2011, April 26, 2011, and May 25, 2011). In the final letter,
6 defendants' counsel claims to have called a number provided by plaintiff and been unable to
7 reach him at that number. At the same time, counsel is asking the court to stay discovery and
8 rule on dispositive motions (ECF No. 27).

10 The plaintiff in this matter is an inmate incarcerated in a Washington Correctional
11 Facility. Counsel for defendants represents the Washington State Department of Corrections.
12 Counsel for defendants should be cautioned not to use the plaintiff's incarceration and self-
13 representation as tool to avoid meaningful advancement of discovery. For instance, counsel may
14 not have been able to reach the plaintiff at the number he provided, but counsel certainly had the
15 ability to facilitate a conference. Also, requesting a discovery conference should not be
16 conditioned on defendants' counsel's conclusion that plaintiff has complied with the Fed. R. of
17 Civ. P. In fact, one of the purposes of such a discovery conference is to air objections and
18 attempt to resolve them so that discovery can proceed. There appear to be ways to resolve all of
19 the discovery disputes that have arisen between the parties through mutual cooperation. The
20 court may consider an award of sanctions pursuant to Fed. R. Civ. P. 11(c)(3) if it appears that
21 the parties, and/or their counsel, are not proceeding in good faith to complete reasonable
22 discovery.

25 The currently pending motion for summary judgment and cross motion will not be
26 considered at this time. Within the next 14 days, defendants' counsel will set up a telephonic

1 conference with the plaintiff to discuss discovery matters. The currently pending motions for
2 summary judgment and cross motion will be re-set, by the court, after the parties have filed a
3 joint notice to the court stating that they have met regarding discovery and outlining the outcome
4 of that meeting.

5 DATED this 23rd day of June 2011.
6

7
8 

9 J. Richard Creatura
10 United States Magistrate Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26